

DISTRICT OF COLUMBIA
Office of Administrative Hearings
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 727-8280
FAX: (202) 737-3497

L.O.

Petitioner,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES
Respondent

Case No.: 2011-DHS-00470

FINAL ORDER

I. Introduction

A hearing was held in this case on November 15, 2011. The record was held open until November 22, 2011.

For the following reasons, I find as a fact that, during the time period May 2011 through November 2011, Petitioner L.O.'s 20-to-21-year-old daughter, J.H., **DID NOT** live with Ms. O., Ms. O.'s minor granddaughter Z.H. (the daughter's daughter), and Ms. O.'s other minor child, in Ms. O.'s home.

Consequently, Respondent District of Columbia Department of Human Services ("DHS") erred in determining that, under the Temporary Assistance for Needy Families ("TANF") program, Z.H.'s household must include J.H., but not Ms. O. Respondent erred in reducing Ms. O.'s TANF benefit to \$269 for her household with her other minor child.

Respondent has also erred in determining that, under the Food Stamps (“FS”) program, Ms. O.’s household must include both J.H. and Z.H., along with Ms. O.’s minor child. Therefore, Respondent erred in reducing Ms. O.’s FS benefits to \$484, after including J.H. as a household member and considering her unearned income.

Therefore, I must reverse Respondent’s August 2, 2011 Notice with regard to Ms. O.’s TANF and FS benefits.

II. Procedural History

On August 26, 2011, Ms. O. requested a hearing regarding the TANF and FS programs.

A hearing was originally held on October 4, 2011. Ms. O. appeared on her own behalf. Ronald Dieuveuil, Supervisory Social Services Representative, appeared on behalf of Respondent.

Ms. O. requested a continuance to retain an attorney. Mr. Dieuveuil did not oppose the request, and it was granted. In order to give Respondent an opportunity to retain an attorney as well, I required that any attorney for Ms. O. must enter an appearance at least one week before the continued hearing.

No attorney entered any appearance on behalf of Ms. O.

The hearing was held on the merits on November 15, 2011. Ms. O. again appeared and elected to represent herself at the hearing. Mr. Dieuveuil again appeared and testified on behalf of Respondent. Glenda Brown, Supervisory Hearing and Appeals Examiner, testified on behalf of Respondent. Ms. O. testified on her own behalf.

At Respondent's request, the record was held open for one week for submission of additional exhibits. Respondent did timely submit two additional exhibits. Ms. O. also timely submitted three exhibits.

The following exhibits were admitted into evidence:

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| Respondent's Exhibit ("RX") 200 - | Administrative Review Report, dated September 27, 2011, with 23 pages of attachments. |
| RX 201 - | E-mail message from Ms. Brown to Tanya Roberts of DHS, dated July 12, 2011. |
| RX 202 - | E-mail messages between Ms. Brown and Holloway Wooten, Esq., of DHS, all dated August 2, 2011, with attached printout of Ms. O.'s Case Profile - Page 3, Setup Participation, Vital Records, and Case Profile - Page 2. |
| RX 203 - | Supplemental Exhibit - IMA Policy Manual Excerpts - Part IV: Non-Financial Eligibility Requirements; and Part V: Program Requirements and Sanctions. |
| RX 204 - | Supplemental Exhibit - printout of J.H.'s Representative Name and Address; Benefits Payments; and Address. |
| Petitioner's Exhibit ("PX") 100 - | Supplemental Exhibit - Ms. O.'s statement of her discussions with Mr. Toymie and Mr. Richard Walker of DHS, dated November 21, 2011. |
| PX 101 - | Supplemental Exhibit - copy of U.S. Treasury check issued on June 1, 2011, to J.H. at 642 Milwaukee Place, S.E., in the amount of \$381.94. |
| PX 102 - | Supplemental Exhibit - U.S. Social Security Administration ("SSA") Notice of Planned Action, issued on July 14, 2011 to J.H. at 318 19 th Street, N.E. |

The record closed on November 22, 2011.

Based upon the testimony of the witnesses, my evaluation of their credibility, and the exhibit admitted into evidence, I now make the following findings of fact and conclusions of law.

III. Findings of Fact

A. Actual Findings

Ms. O.'s Household Prior to Investigation

Prior to September 1, 2011, Ms. O. received TANF of \$342 per month and FS benefits of \$526 per month. Both the TANF and FS benefits covered a household of three persons: Ms. O.; her 14-year-old child; and her nearly three-year-old granddaughter, Z.H. The status of Ms. O.'s 14-year-old child is not at issue in this case, as this child lives with Ms. O., and Ms. O. is the child's custodial parent. At all times relevant to this case, Respondent has continued to include the 14-year-old child in Ms. O.'s household.

At all times relevant to this case, Ms. O. has lived at [Ms. O.'s address].

Ms. O.'s daughter, J.H., who is now 21 years of age, is the mother of Z.H. J.H. has struggled with mental illness and has not been consistent in caring for Z.H. J.H. has lived with Ms. O. for periods of time, and has lived on her own for periods of time.

Because of J.H.'s lack of reliability, Ms. O. has assumed the role of primary caregiver for Z.H. Ms. O. does not have legal custody of Z.H.

As of May 2011, J.H. lived apart from Ms. O. at [J.H.'s address]. PX 101. Ms. O. welcomed her daughter to her home and encouraged the daughter to be with Z.H. During times that J.H. was there, J.H. shared meals with the family and slept in the home.

The DHS Investigation

On May 16, 2011, Glenda Brown, Supervisory Hearing and Appeals Examiner, spoke with Ms. O. by telephone concerning her public assistance benefits. Ms. O. told Ms. Brown that J.H., then 20 years old, was staying in her home off and on, and that J.H. did live with her. Although Ms. Brown focused on this statement, the context of the statement showed that Ms. O. meant to convey that J.H. lives in her home when J.H. visits, but her permanent address is elsewhere.

Because of this conversation, Respondent investigated the status of Ms. O.'s household. Respondent's Exhibits ("RX") 201 and 202.

Respondent relied upon the following information and conclusions: (1) based on Ms. Brown's conversation with Ms. O. on May 16, 2011, Ms. O. has admitted that J.H. primarily lived with her; (2) Ms. O. is listed by the U.S. Social Security Administration ("SSA") as the payee for J.H.'s supplemental security income ("SSI") benefits; RX 202 and 203; and (3) J.H. has received Medicaid benefits, using Ms. O.'s address, from 2003 until 2008. RX 203.

Based on these factors, primarily the first two factors, Respondent concluded that J.H. lived with Ms. O. and Z.H.

TANF - Respondent determined that Ms. O. could not be the head of household for Z.H., because J.H. was the custodial parent who must be the head of household under the TANF program. Ms. O. remained the head of household for her 14-year-old child only.

FS – Respondent determined that it must include J.H. and Z.H. (along with the 14-year-old child) in Ms. O.’s household for FS purposes, because all four household members shared meals together. Since the daughter was under the age of 22 years, she must be included in Ms. O.’s household. Consequently, the household size was increased to four persons, but the daughter’s SSI income of \$674 per month, RX 204, was considered in calculating the FS benefit.

The Notice of Decrease in TANF and FS Benefits

On August 2, 2011, Respondent sent a Notice of Decrease in Payment – Decrease in FS, to Ms. O. RX 200 pp. 4-5. The Notice informed Ms. O. that, effective September 1, 2011, her TANF benefits would decrease to \$269 per month, and her FS benefits would decrease to \$484 per month. The reason for the decreases was given:

[Z.H.] HAS BEEN REMOVED FROM YOUR TANF CASE, SO THAT HER MOTHER CAN APPLY FOR TANF BENEFITS FOR HER. [J.H.] HAS BEEN ADDED TO YOUR FOOD STAMP CASE, SHE IS 21 YRS. OLD AND LIVES WITH YOU; THEREFORE SHE MUST BE INCLUDED IN YOUR FOOD STAMP CASE HER SSI INCOME OF \$674.00 MONTHLY WILL BE COUNTED TOWARD YOUR FOOD STAMP ALLOTMENT.

RX 200 p. 4.

Respondent's Request for Additional Information

On August 17, 2011, Ms. Brown spoke with Ms. O. by telephone. Ms. O. told Ms. Brown that J.H. was in and out of her home, and that Ms. O. will not refuse to allow J.H. to see Z.H. Ms. O. denied that J.H. lived there on a permanent basis. Ms. Brown asked Ms. O. for a written statement and other documentation verifying that J.H. does not live with Ms. O. Ms. O. terminated the conversation.

On August 17, 2011, Respondent sent a General Communication Notice to Ms. O., requesting that she provide verifications to show that J.H. does not live with her. RX 200 pp. 7-8. Ms. O. has not responded to this Notice.

Ms. O. requested a hearing, which request was received by OAH on August 26, 2011. Ms. O. also requested that her TANF and FS benefits be continued at their former level while the hearing request was pending. This request was granted. RX 200 pp. 20-23.

Ms. O. has continued to receive TANF of \$342 per month, and FS of \$526 per month, while her hearing request is pending.

Additional Factors

Ms. O. has provided at the hearing, two alternate addresses where J.H. lives: (1) as of June 1, 2011, J.H. lived at [first address].; PX 101; and (2) as of July 14, 2011, J.H. had moved to [second address]. PX 102. Both addresses were on file with the SSA.

As of November 2011, the last address on record with DHS for J.H. was Ms. O.'s address. RX 203.

Ultimate Finding of Fact

During the period, May 2011 through November 2011, Ms. O.'s daughter J.H. has lived on her own, and not with Ms. O. and Z.H.

B. Factual Analysis

The outcome of this case is absolutely determined by the resolution of the key factual dispute: whether Ms. O.'s daughter J.H. lived with Ms. O. (and her other child and granddaughter) during the period, May 2011 through November 2011. If this factual dispute is resolved in Ms. O.'s favor, she wins the case. If not, she loses. After carefully reviewing the evidence, I conclude that Ms. O.'s position is correct.

This issue is so close that, if not for the last three documents submitted by Ms. O., I would have ruled in favor of Respondent. However, Ms. O. has successfully rebutted Respondent's evidence. Particularly persuasive are the two notices/checks issued by the SSA to J.H., listing different addresses. PX 101 and 102. I am persuaded that, since the SSA records show J.H. living separately from Ms. O., J.H. did in fact live separately.

The evidence supporting Respondent's position is: (1) Ms. Brown's testimony that, on May 16, 2011, Ms. O. admitted to Ms. Brown that J.H. lived with her (an account that Ms. O. disputes in part, and claims was taken out of context. Consequently, I give less weight to this particular conversation); (2) proof that J.H. has authorized Ms. O. to be the payee of her SSI benefits, and that SSA has sent checks to Ms. O. at her address; and (3) proof that the last address on record with DHS for J.H. is Ms. O.'s address (as well as the fact that J.H. has used this address for Medicaid benefits in the past).

The evidence supporting Ms. O.'s position at the hearing consists of her testimony to the effect that: (1) J.H. has suffered from mental illness and has not been capable of taking care of Z.H.; (2) J.H. has lived with Ms. O. in the past but moved out; and (3) J.H. has only been an intermittent visitor to Ms. O.'s house. Ms. Brown has also acknowledged that, in their August 17, 2011 conversation, Ms. O. denied that J.H. lived with her.

The most convincing evidence in favor of Ms. O.'s position [consists of] the two notices issued by the SSA. It is clear that J.H. has held herself out to the SSA as living at separate addresses from Ms. O. during the time period in question. In addition, Ms. O.'s statement explains why DHS would still list J.H.'s address as the same as Ms. O.'s address: according to Mr. Walker of DHS, the database has not been updated since J.H. last received public assistance.

In general, while there is conflicting evidence, the preponderance of the evidence shows that J.H. has lived first at [first address], PX 101, and then at [second address]. PX 102.

For these reasons, I have found that Ms. O.'s daughter J.H. has not lived with her during the period, May 2011 through November 2011.

IV. Conclusions of Law

The legal issues are whether Respondent has: (1) correctly excluded Ms. O. as the head of household for Z.H., after J.H. has moved into her home, under the TANF program; and (2) correctly included her entire household, including J.H., under the FS program. Because of my finding that J.H. did not live in the home, I conclude that Respondent has erred.

I will discuss the applicable program requirements for the TANF and FS programs.

A. TANF Program Requirements

In this case, under the TANF program, Respondent has deemed Ms. O.'s daughter to be the head of household for Ms. O.'s granddaughter, because: (1) the daughter is the parent of the granddaughter; (2) they live in the same home; and (3) under these circumstances, the grandparent (Ms. O.) who does not have custody of the granddaughter cannot be included in the household, even if the grandparent lives in the same home.

If Respondent were correct that J.H. lived in the home, I would uphold its decision. However, since J.H. lived at a separate address, Respondent has committed error.

The District's requirements for the TANF program are codified by statute at D.C. Official Code Title 4 Chapter 2, and by regulation at 29 DCMR Chapter 58. DHS has also promulgated its IMA Policy Manual, which provides more specific guidance. The Policy Manual is only valid to the extent that it is consistent with applicable law.

The statute defines a TANF assistance unit based on the status of the dependent minor child, in this case, Z.H., the granddaughter of Ms. O. We start with this child and then determine whether there are parents or other responsible adults in the household.

D.C. Official Code § 4-205.15(a) applies if a parent and dependent minor child live in the same household. This statute defines the TANF assistance unit as including: the parent; the dependent minor child; a step-parent and his/her dependent minor children, if applicable; and any blood-related and adopted brothers and sisters of the dependent child.

However, under § 4-205.15(d), if no parent is living in the home, a caretaker relative may be included, if the caretaker relative meets all eligibility criteria.

Since I have found that J.H. does not live in Ms. O.'s home, § 4-205.15(d) applies here. Ms. O. as a caretaker relative is head of household for Z.H., as well as her own minor child.

The regulations, 29 DCMR 5800 *et seq.*, do not discuss the household composition.

The IMA Policy Manual provides further guidance:

PART IV: NON-FINANCIAL ELIGIBILITY REQUIREMENTS

CHAPTER 1: GROUP COMPOSITION

MANDATORY GROUP MEMBERS 1.3

TANF To determine the TANF mandatory group members, SSRs should start the group formation with the child for whom assistance is requested. If no step-parent is in the home, the child's parent(s) who lives in the home and meets each non financial eligibility requirement must then be included.

RX 203

Again, this provision only applies if J.H. lives in the home. Since she did not, Ms. O. qualifies to be a member of the household.

Therefore, since the factual predicate for Respondent's action was incorrect, I must reverse the action and order Respondent to reinstate Ms. O.'s prior TANF benefits of \$342 per month for a household of three persons.

Respondent did not present any evidence as to how it calculated the TANF benefit. The record does not show whether Ms. O. had any countable income or was entitled to any income disregards.

Under D.C. Official Code § 4-205.52(c), the TANF standard of assistance for a family of three is \$712 and the payment level is \$379. If Ms. O. meets the standard of assistance, she is

eligible for the TANF grant of \$379 per month less any deductible income. § 4-205.52(a). In addition, she may be paying back an overpayment claim.

The focus of Ms. O.'s concern was whether her daughter was actually living with her. Ms. O. did not request a hearing as to the calculation of her TANF benefit. If she would like to contest the amount of her TANF, she may do so by requesting reconsideration within 15 days of the issuance of this Order. OAH Rule 2828.

B. FS Program Requirements

With regard to the FS program, Respondent has determined that it must include J.H. in Ms. O.'s household because J.H. is under 22 years of age and living in Ms. O.'s home. Respondent would be correct only if J.H. lived in Ms. O.'s home.

The United States Department of Agriculture ("USDA") administers the FS program at the federal level. 7 C.F.R. § 273.1 establishes the household concept. Under § 273.1(a)(2), a household generally consists of "[a]n individual living with others, but customarily purchasing food and preparing food and preparing meals for home consumption separate and apart from others[.]"

A household also includes "[a] person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s)[.]" § 273.1(b)(1)(ii).

To be included in a household, a person must be "living" with the others. Further, a person cannot be a member of more than one household, subject to some exceptions that do not apply here. § 273.3(a).

Since the factual predicate for Respondent's action was incorrect, Respondent has erroneously included J.H. in Ms. O.'s household. J.H. periodically ate meals with Ms. O.'s family, but she did not do so on a regular basis.

For these reasons, I must reverse Respondent's decision to include J.H. in the household. For FS purposes, the household only consists of Ms. O., her minor child, and Z.H.

Again, Respondent has not shown how it calculated the FS allotment. The calculation of the FS allotment requires consideration of a number of factors, including the amount of Ms. O.'s household income, any allowable deductions from income, excess medical expenses, child care expenses, and excess shelter costs. § 273.10.

Since the thrust of Ms. O.'s case was to deny that J.H. was part of her household, and since this case does not involve a claim of FS overissuance, Respondent is excused for not providing evidence of how it calculated the FS allotment.

If Ms. O. would like to have a hearing on the calculation of her FS allotment, she may file a request for reconsideration within 15 days of the issuance of this Order.

C. Summary of Ruling

Based on the foregoing analysis, I conclude that, since Respondent erroneously included J.H. in Ms. O.'s household for TANF and FS benefits, Respondent has erroneously reduced Ms. O.'s TANF and FS benefits. I will reverse Respondent's adverse Notice and order Respondent to reinstate Ms. O.'s prior TANF and FS benefits.

Since Ms. O. has continued to receive her prior benefits while her hearing request has been pending, Respondent is not required to issue any underpayment of TANF or FS to Ms. O.

I cannot review whether Respondent has correctly calculated Ms. O.'s TANF and FS amounts. If Ms. O. would like a hearing on these calculations, she may file a request for reconsideration within 15 days.

V. Order

Therefore, based upon the foregoing findings of fact and conclusions of law, it is hereby, this _____ day of _____, 2011:

ORDERED, that Respondent District of Columbia Department of Human Services's August 2, 2011 Notice, reducing Ms. O.'s TANF benefits to \$269, and her FS benefits to \$484, as of September 1, 2010, is **REVERSED**. Respondent shall immediately reinstate Ms. O.'s prior TANF of \$342 per month and FS of \$526 per month; and it is further

ORDERED, that, if Ms. O. seeks a hearing to review the calculation of her TANF and/or FS benefits, she may file a request for reconsideration within **FIFTEEN (15) DAYS** of the service date of this order; and it is further

ORDERED, that any person may appeal this Order by following the instructions below.

/s/ November 25, 2011

Paul B. Handy
Administrative Law Judge

